



Sen. Michael W. Frerichs

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LRB098 01531 KTG 42729 a

1 AMENDMENT TO SENATE BILL 47

2 AMENDMENT NO. _____. Amend Senate Bill 47 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Public Aid Code is amended by
5 changing Section 11-22 as follows:

6 (305 ILCS 5/11-22) (from Ch. 23, par. 11-22)

7 Sec. 11-22. Charge upon claims and causes of action for
8 injuries. The Illinois Department shall have a charge upon all
9 claims, demands and causes of action for injuries to an
10 applicant for or recipient of (i) financial aid under Articles
11 III, IV, and V, (ii) health care benefits provided under the
12 Covering ALL KIDS Health Insurance Act, or (iii) health care
13 benefits provided under the Veterans' Health Insurance Program
14 Act or the Veterans' Health Insurance Program Act of 2008 for
15 the total amount of medical assistance provided the recipient
16 from the time of injury to the date of recovery upon such

1 claim, demand or cause of action. In addition, if the applicant
2 or recipient was employable, as defined by the Department, at
3 the time of the injury, the Department shall also have a charge
4 upon any such claims, demands and causes of action for the
5 total amount of aid provided to the recipient and his
6 dependents, including all cash assistance and medical
7 assistance only to the extent includable in the claimant's
8 action, from the time of injury to the date of recovery upon
9 such claim, demand or cause of action. Any definition of
10 "employable" adopted by the Department shall apply only to
11 persons above the age of compulsory school attendance.

12 If the injured person was employable at the time of the
13 injury and is provided aid under Articles III, IV, or V and any
14 dependent or member of his family is provided aid under Article
15 VI, or vice versa, both the Illinois Department and the local
16 governmental unit shall have a charge upon such claims, demands
17 and causes of action for the aid provided to the injured person
18 and any dependent member of his family, including all cash
19 assistance, medical assistance and food stamps, from the time
20 of the injury to the date of recovery.

21 "Recipient", as used herein, means (i) in the case of
22 financial aid provided under this Code, the grantee of record
23 and any persons whose needs are included in the financial aid
24 provided to the grantee of record or otherwise met by grants
25 under the appropriate Article of this Code for which such
26 person is eligible, (ii) in the case of health care benefits

1 provided under the Covering ALL KIDS Health Insurance Act, the
2 child to whom those benefits are provided, and (iii) in the
3 case of health care benefits provided under the Veterans'
4 Health Insurance Program Act or the Veterans' Health Insurance
5 Program Act of 2008, the veteran to whom benefits are provided.

6 In each case, the notice shall be served by certified mail
7 or registered mail, or by facsimile or electronic messaging
8 when requested by the party or parties against whom the
9 applicant or recipient has a claim, demand, or cause of action,
10 upon the party or parties against whom the applicant or
11 recipient has a claim, demand or cause of action. The notice
12 shall claim the charge and describe the interest the Illinois
13 Department, the local governmental unit, or the county, has in
14 the claim, demand, or cause of action. The charge shall attach
15 to any verdict or judgment entered and to any money or property
16 which may be recovered on account of such claim, demand, cause
17 of action or suit from and after the time of the service of the
18 notice.

19 On petition filed by the Illinois Department, or by the
20 local governmental unit or county if either is claiming a
21 charge, or by the recipient, or by the defendant, the court, on
22 written notice to all interested parties, may adjudicate the
23 rights of the parties and enforce the charge. The court may
24 approve the settlement of any claim, demand or cause of action
25 either before or after a verdict, and nothing in this Section
26 shall be construed as requiring the actual trial or final

1 adjudication of any claim, demand or cause of action upon which
2 the Illinois Department, the local governmental unit or county
3 has charge. The court may determine what portion of the
4 recovery shall be paid to the injured person and what portion
5 shall be paid to the Illinois Department, the local
6 governmental unit or county having a charge against the
7 recovery. In making this determination, the court shall conduct
8 an evidentiary hearing and shall consider competent evidence
9 pertaining to the following matters:

10 (1) the amount of the charge sought to be enforced
11 against the recovery when expressed as a percentage of the
12 gross amount of the recovery; the amount of the charge
13 sought to be enforced against the recovery when expressed
14 as a percentage of the amount obtained by subtracting from
15 the gross amount of the recovery the total attorney's fees
16 and other costs incurred by the recipient incident to the
17 recovery; and whether the Department, unit of local
18 government or county seeking to enforce the charge against
19 the recovery should as a matter of fairness and equity bear
20 its proportionate share of the fees and costs incurred to
21 generate the recovery from which the charge is sought to be
22 satisfied;

23 (2) the amount, if any, of the attorney's fees and
24 other costs incurred by the recipient incident to the
25 recovery and paid by the recipient up to the time of
26 recovery, and the amount of such fees and costs remaining

1 unpaid at the time of recovery;

2 (3) the total hospital, doctor and other medical
3 expenses incurred for care and treatment of the injury to
4 the date of recovery therefor, the portion of such expenses
5 theretofore paid by the recipient, by insurance provided by
6 the recipient, and by the Department, unit of local
7 government and county seeking to enforce a charge against
8 the recovery, and the amount of such previously incurred
9 expenses which remain unpaid at the time of recovery and by
10 whom such incurred, unpaid expenses are to be paid;

11 (4) whether the recovery represents less than
12 substantially full recompense for the injury and the
13 hospital, doctor and other medical expenses incurred to the
14 date of recovery for the care and treatment of the injury,
15 so that reduction of the charge sought to be enforced
16 against the recovery would not likely result in a double
17 recovery or unjust enrichment to the recipient;

18 (5) the age of the recipient and of persons dependent
19 for support upon the recipient, the nature and permanency
20 of the recipient's injuries as they affect not only the
21 future employability and education of the recipient but
22 also the reasonably necessary and foreseeable future
23 material, maintenance, medical, rehabilitative and
24 training needs of the recipient, the cost of such
25 reasonably necessary and foreseeable future needs, and the
26 resources available to meet such needs and pay such costs;

1 (6) the realistic ability of the recipient to repay in
2 whole or in part the charge sought to be enforced against
3 the recovery when judged in light of the factors enumerated
4 above.

5 The burden of producing evidence sufficient to support the
6 exercise by the court of its discretion to reduce the amount of
7 a proven charge sought to be enforced against the recovery
8 shall rest with the party seeking such reduction.

9 The court may reduce and apportion the Illinois
10 Department's lien proportionate to the recovery of the
11 claimant. The court may consider the nature and extent of the
12 injury, economic and noneconomic loss, settlement offers,
13 comparative negligence as it applies to the case at hand,
14 hospital costs, physician costs, and all other appropriate
15 costs. The Illinois Department shall pay its pro rata share of
16 the attorney fees based on the Illinois Department's lien as it
17 compares to the total settlement agreed upon. This Section
18 shall not affect the priority of an attorney's lien under the
19 Attorneys Lien Act. The charges of the Illinois Department
20 described in this Section, however, shall take priority over
21 all other liens and charges existing under the laws of the
22 State of Illinois with the exception of the attorney's lien
23 under said statute.

24 Whenever the Department or any unit of local government has
25 a statutory charge under this Section against a recovery for
26 damages incurred by a recipient because of its advancement of

1 any assistance, such charge shall not be satisfied out of any
2 recovery until the attorney's claim for fees is satisfied,
3 irrespective of whether or not an action based on recipient's
4 claim has been filed in court.

5 This Section shall be inapplicable to any claim, demand or
6 cause of action arising under (a) the Workers' Compensation Act
7 or the predecessor Workers' Compensation Act of June 28, 1913,
8 (b) the Workers' Occupational Diseases Act or the predecessor
9 Workers' Occupational Diseases Act of March 16, 1936; and (c)
10 the Wrongful Death Act.

11 (Source: P.A. 94-693, eff. 7-1-06; 94-816, eff. 5-30-06;
12 95-755, eff. 7-25-08.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law."